IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 1770 of 1999
With
CRIMINAL MISC.APPLICATION No. 1771 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHAMPA LAL SALIGRAM GOSWAMI - Applicant(s)
Versus
CHHAGANBHAI BHIMABHAI MODHWADIA & 1 - Respondent(s)

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Appearance :
MR KJ SHETHNA for Applicant
MR MC BHATT for Respondent : 1,
MR MR MENGDEY, APP for Respondent : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 09/10/2007

ORAL JUDGMENT

In the present petitions, the petitioner is common. He is the original accused in a complaint

bearing Criminal Complaint No.1968 of 1996 filed before the Court of Chief Judicial Magistrate, Jamnagar by respondent No.1.

2. In Criminal Misc. Application No.1770 of 1999, the prayer is for quashing the complaint primarily on the ground that the averments made in the complaint even if taken on face value do not disclose any offence. In Criminal Misc. Application No.1771 of 1999, prayer is made that at any rate, criminal proceedings should be stayed till, on same set of facts, civil suit filed by the complainant is concluded.

3. Learned advocate Shri K.J.Shethna appearing for the petitioner in both the petitions has made detailed submissions on the prayer of the petitioner for quashing the proceedings altogether. He conceded that though at one point of time, view of this Court was that ordinarily, when for identical set of facts, civil as well as criminal proceedings are instituted, it would be desirable to stay the criminal proceedings till the conclusion of the civil case, by virtue of the subsequent view of the Apex Court,this would not be strictly necessary and in a given case, it would be open for the concerned court to independently pursue the criminal proceedings. I have, therefore, focused my attention mainly on the prayer of the petitioner to quash the criminal case filed against him by respondent No.1 herein.

4. Before adverting to the rival contentions and dealing with the same, facts in brief involved in the criminal complaint need to be noted.

5. The above-mentioned complaint was filed by respondent No.1 complaining commission of offence punishable under section 499 and 500 of the Indian Penal Code. The complainant stated in the complaint, inter alia, that he is a respectable member of his community and owns large parcel of land and other properties worth crores of rupees. He is closely involved in trade union activities in Saurashtra region since long. He is the president of a trade union, namely, Shram Jeevi Utkarsh Union, which is a registered and recognized trade union. He is also the General Secretary of one Gujarat State Rajya Kamdar Sabha, a registered trade union which is also recognized. He is also the President of yet another union. He is a member of a local committee constituted by the State Government under the ESI Act. In short, it is the case of the complainant that he is a highly respectable member of the society. He has also narrated various positions occupied by his close relatives to demonstrate that he comes from a respectable family. He stated that only for the purpose of upliftment of downtrodden and poor workers, he is involved in the union activities to ensure that they are not exploited by the management. On behalf of such workers, he takes up cudgels with the management for their rights. He further stated in the complaint that the management

of Birla VXL Limited and Digjam Woolen Limited was very adamant and was not prepared even to negotiate regarding workers demand and refused to recognize the elected panel of the members. In short, number of disputes were pending between the Union and the management at several levels. The management on account of the involvement of the complainant is antagonized.

6. On 21.3.95, the accused orally conveyed wrong information to the State Minister Shri Ashokbhai Bhatt and followed up the same by a written communication dated 10.4.95 when he wrote a 9 page letter to the said Hon'ble Minister, containing false and fictitious allegations which were also defamatory in nature. He sent a copy of the letter to the Hon'ble Minister as well as translated copy thereof to the Hon'ble Governor of Gujarat, upon which the said letter was circulated by the Government to the Labour and Employment Department of the Government and to the Labour Commissioner and subsequently to various other Government authorities. This letter carried a title “Objectionable and Mafia Activities of Gujarat Rajya Kamdar Sabha” and according to the complainant carried false and defamatory statements against the Union as well as the complainant. Some of the objectionable materials as per the complainant were :-

(i)Shri R.J.Mehta, through his suspicious union activities collected crores of rupees and his

sons ave been thereby settled in diamond business.

(ii)Shri R.J.Mehta is continuously active in advancement of his activities and some of the big industrial houses of Mumbai are using him to harass their rival producers in Gujarat.

(iii)Jamnagar unit of the said Union is handled by Shir Chhaganbhai Modhwadia, i.e. the complainant, who belongs to Mer community. Though he is only a farmer, presently he is a close associate of Shri R.J.Mehta and looks after his activities in Jamnagar. He is not employed in any industry and has no experience of running an industry. He only owns a small piece of land. His main business is of grabbing land illegally, purchasing agricultural lands through benami transactions and then selling plots without converting the land into NA land. Such transactions were done in stamp paper of Rs.10 directly by selling the land to simple people as residential plots. His only specialty is that he belongs to Mer community and claims to have connection with anti-social elements of the said community in Porbandar. On account of this, no one has the courage to oppose him and this is sufficient to terrorize the workmen. He collects huge funds from the workers and thereby collected lakhs of rupees without giving any account thereof nor anybody has courage to ask for such an account.

(iv)Under the leadership of Chhaganbhai, number of

illegal activities have been carried out including violent acts, threats, kidnapping, illegal strike, etc. For such activities, FIRs have also been lodged against him. He tries to prevent the workers from discharging their duties forcefully. He threatens the officers of the Company by saying that if they do not act according to the wish of the Union, they should be prepared to pack their bags. He openly talks of eliminating the officers in the gate meetings of the Union.

(v)Like R.J.Mehta, Chhaganbhai also uses filthy language for other unions.

7. On the said complaint, the learned Magistrate after examining the complainant on oath issued process under section 200 of the Criminal Procedure Code on 9.4.96.

8. After failing the attempt of requesting the learned Magistrate to discharge the accused, the petitioner has filed the present petition seeking quashing of the complaint. It is the case of the petitioner that he was at the relevant time the President of the Digjam Woolen Limited, Jamnagar and had written the said letter to the Hon'ble Minister in public interest. It is the case of the petitioner that reading the letter as a whole and also looking to the provisions of section 499 of the Indian Penal Code in its entirety, it cannot be stated that any offence is disclosed against the petitioner.

9. Appearing for the petitioner, learned advocate Shri K.J.Shethna submitted that the complaint does not disclose any offence punishable under section 500 of the Indian Penal Code. He further submitted that the communication was meant only to the Hon'ble Minister and there was no intention to defame the complainant.

10.1 It was next contended that the contents of the letter are not defamatory and further that the same were made in larger public interest to ensure that the Union activities carried out by the complainant do not vitiate the industrial atmosphere and damage the industries in and around Jamnagar.

10.2 It was submitted that under section 482 of the Criminal Procedure Code, this Court has power in an appropriate case to quash the proceedings if it is found that the complaint discloses no offence or that there is no possibility of recording conviction against the accused.

10.3 It was further submitted that the case of the petitioner herein would fall under various exceptions provided in section 499 of the Indian Penal Code.

10.4 Various decisions of the Apex Court have been cited to which I will revert to at a later stage.

11. On the other hand, learned advocate Shri Jigar Raval appearing for respondent No.1, original-complainant opposed the petition and submitted that whether the case of the petitioner falls in any of the exceptions can be decided only at the time of trial. He further submitted that the contents of the letter written by the petitioner are ex-facie defamatory and that therefore this court should not quash the complaint even before the trial. He further submitted that the Court exercising powers under section 482 of the Criminal Procedure Code must act cautiously and only in rare cases, complaint should be quashed.

12. Learned APP Mr.Mengdey appearing for the State also opposed the petition and submitted that the learned Trial Judge rightly refused to drop the proceedings as all issues can be resolved only after the evidence is led and trial is concluded.

13. Having heard the learned advocates appearing for the parties, at the outset, it cannot be stated that the contents of the letter written by the petitioner contain no defamatory statements. Certain portion of the letter has been reproduced hereinabove. The contents thereof clearly demonstrate that barring the exception carved out in section 499 of the Indian Penal Code, the statements made by the complainant are certainly defamatory in nature.

14. Section 499 of the Indian Penal Code defines 'defamation' as under:

> “499. Defamation.--Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.”

It cannot be stated that the petitioner did not publish the imputations since admittedly he had written a letter to the Hon'ble Minister with copies to the Hon'ble Governor and this letter was circulated amongst different departments of the Government. The contents of the letter are also such which can be described as imputations which could harm the reputation of a person.

15. Learned advocate for the petitioner, however, submitted that the case of the petitioner falls under exception 1, 3, 8, 9 and 10 of section 499. These exceptions read as follows:

> “First Exception.-Imputation of truth which public good requires to be made or published.- It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.
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> ......

> Third Exception.-Conduct of any person touching any public question. -It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.
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> .....
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> Eighth Exception.-Accusation preferred in good faith to authorised person.-It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.
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> Ninth Exception.-Imputation made in good faith by person for protection of his or other's interests.-It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good.
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> Tenth Exception.-Caution intended for good of person to whom conveyed or for public good.- It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good."

16. At the outset, I am entirely in agreement with the learned advocate for respondent No.1 that whether in the facts of the present case, the case of the petitioner falls in any of the exceptions or not can be judged only after the evidence is led and appreciated by the Trial Court. In fact, in the

first exception, it is stated that in section 499, whether or not imputation is for public good is a question of fact. It may be that in a given case, without any further inquiry or investigation, it is possible for this Court to conclude that despite prima facie imputations amounting to defamation as defined in section 499 of the Indian Penal Code, the case falls under any of the exceptions. In the present case, however, the same cannot be stated with any clarity without any material on record. Whether the imputations are true or not, whether they were necessary to be made in public interest or not, etc. are issues which can be gone into only after full evidence is permitted to be led. To my mind, therefore, no case is made out for scuttling the inquiry and trial at the threshold.

17. In that view, I am in agreement with the contention of the learned advocate for respondent No.1, complainant when he relied on the decisions of the Apex Court in the case of **Chaman Lal v. State of Punjab**, AIR 1970 SC 1372 and in the case of **Sewakaram Sobhani v. K.R.Karanjiya**, 1981 Cri.L.J. 894.

18. It is well settled that High Court exercising powers under section 482 of the Criminal Procedure Code should be cautious and circumscribed. The parameters for exercise of such powers have been well laid down and oft repeated in number of decisions.

19. Coming to the authorities relied on by the learned counsel for the petitioner, I find that :

(1) In the case of **State of Karnataka v. Munniswamy**, (1977) 2 SCC 699, the Apex Court observed that in exercise of wholesome power, the High Court is entitled to quash the proceedings if it comes to the conclusion that allowing the proceedings to continue would be an abuse of process of Court or that the ends of justice require that the proceeding ought to be quashed.

(2) In the case of **Vadilal Panchal v. Dattatraya**, AIR 1960 SC 1113, the Apex Court held that there is no absolute proposition that plea of self-defence can in any event be considered by the Magistrate in dealing with the complaint under the provisions of section 200, 202 and 203 of the Criminal Procedure Code.

Primarily, the present case is for quashing the complaint under section 482 of the Criminal Procedure Code and the above observations cannot be bodily lifted and relied upon. In any case, in the facts of the case, I find that it is not possible to snuff out the criminal prosecution without there being further inquiry and trial.

(3) In the case of **A.K.Chaudhary v. State of Gujarat**, 2005(3) G.L.H. 444, learned single Judge of

this Court was examining the case for abetment of suicide and found, as a matter of fact, that no offence was disclosed in the complaint and was, therefore, pleased to quash the complaint.

I have examined the present case in light of the facts arising and I am unable to find that powers under section 482 are required to be exercised.

(4) In the case of **Rajendra Kumar Sitaram Pande v. Uttam**, (1999) 3 SCC 134, the Apex Court found that the Magistrate had called for report from the Treasury Officer which established that a departmental inquiry has been initiated against the complainant and he was found guilty. On this material, the learned Magistrate dropped the proceedings against the accused which was ultimately upheld by the Apex Court holding that in the facts of the case, exception 8 to section 499 is attracted.

In the present, however, there is no such material to enable this Court to come to any such conclusion.

(5) In **Dhanwanti Vaswani v. State**, 1991 Supp (2) SCC 329, the Apex Court was pleased to uphold the order of the High Court quashing the complaint for defamation under section 482 of the Criminal Procedure Code.

I find that the case was entirely based on the

facts arising therein and no ratio applicable to the present case is laid down.

(6) In the case of **Kartar Singh v. State of Punjab**, AIR 1956 SC 541, the counsel for the petitioner relied on the observations made by the Apex Court in para 12 of the judgment to the effect that persons in public life should not be touchy and should ignore certain insinuations. The observations cannot be applied here wherein allegations of corruption, unruly behaviour and arm-twisting are made against the complainant.

20. In conclusion, I see no possibility of granting the prayer made in Criminal Misc. Application No.1770 of 1999 for quashing the complaint. As already stated, in Criminal Misc. Application No.1771 of 1999, sole prayer is to delay the criminal prosecution till conclusion of the civil case, which counsel for the petitioner did not press with seriousness.

21. In the result, both the petitions are dismissed. Rule is discharged. Interim relief is vacated.

(Akil Kureshi, J.)

(vjn)